

REMARKS

Applicants have amended claims 1, 27, 33 and 37. Applicants acknowledge the Examiner's allowance of claims 8, 9, 15 and 18.

Claims 1-5, 7-13, 15, 18, and 21-43, of which claims 1, 8, 9, 15, 18, 21, 26, 27, 30, 33, 36, 37, and 43 are independent in form, are presented for examination. Each of independent claims 1, 27, 33 and 37 requires a battery system comprising a casing configured to receive one or more batteries; each of independent claims 21, 26, 30, 36 and 43 requires a battery comprising a can having a triangular cross-section; and each of independent claims 26, 33 and 36 requires a battery can having an air access opening.

The Examiner has rejected claims 1-5, 7, 10-13 and 21-43 under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,300,004 (Tucholski).

To state a *prima facie* case of obviousness, the Examiner must demonstrate that the prior art reference or references teach or suggest *all* of the claim limitations. In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991). The Examiner has not done so. Initially, the casing of claims 1, 27, 33 and 37 is not disclosed or suggested by Tucholski. Tucholski concerns itself with individual electrochemical cells. None of the Tucholski figures show a casing configured to receive one or more batteries and to be received within an electronic device, and the Examiner has not identified any feature in Tucholski that is alleged to disclose or suggest a casing configured to receive one or more batteries and to be received within an electronic device. In the absence of a showing by the Examiner that Tucholski teaches or suggests a battery system comprising a casing configured to receive one or more batteries and to be received within an electronic device, a *prima facie* case of obviousness over Tucholski has not been established, and the claims should be allowed over Tucholski.

The Examiner has also not stated a *prima facie* case of obviousness with respect to claims 21, 26, 30, 36 and 43, that require a battery comprising a can having a triangular cross-section. Again, the Examiner has not identified any feature in Tucholski that is alleged to disclose or suggest a battery comprising a can having a triangular cross-section. Instead, the Examiner has merely asserted, without providing any citations or support, that

the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made because... a square or

triangular battery can would be more structurally fit for certain electrical devices.

(See id.). Applicants dispute this assertion, which appears to be in the nature of official notice, and ask the Examiner to articulate the basis for this assertion, so that it can be addressed. (See MPEP 2144.03(C)). In the absence of a showing by the Examiner that Tucholski teaches or suggests a battery system comprising a battery having a can that is triangular in cross-section, a *prima facie* case of obviousness over Tucholski has not been established, and the claims should be allowed over Tucholski.

With regard to claims 26, 33 and 36, that require an air access opening, Tucholski does not disclose a battery can having an air access opening, or having a wall having an air access opening. In rejecting the claims, the Examiner does not allege that Tucholski discloses or suggests the claimed air access opening, and does not allege that the claimed air access opening would be obvious for any other reason. The Examiner, in fact, does not address this limitation at all. Accordingly, the Examiner has failed to state a *prima facie* case of obviousness as to claims 26, 33 and 36, and these claims should be allowed over Tucholski.

The dependent claims are non-obvious over Tucholski for at least the reasons provided above with respect to the independent claims, as well as by virtue of the additional limitations contained therein. For example, each of claims 2, 21, 31, and 38 require a battery can having an air access opening, which is not taught or suggested by Tucholski (and, as discussed above, is not alleged by the Examiner to be present in Tucholski). As another example, claims 10 and 11 require a barrier layer between the cathode and the can, which Tucholski does not disclose or suggest. The Examiner argues that anti-corrosion coating 344 of Tucholski meets this limitation; however, that barrier is coated on

the inside surface of outer cover 345 and at least a top portion of collector nail 340... Coating 344... preferably covers that portion of the inside surface of outer cover 345 and collector nail 340 which is exposed to the active materials in the void region *above the positive and negative electrodes* of the cell.

(See col. 16, lines 37-49 and FIG. 8B, emphasis added). Thus, Tucholski fails to disclose or suggest a barrier between the cathode and the can.

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For at least the reasons presented above, Applicants believe that the claims are in condition for allowance, which action is hereby requested.

Please apply any charges or credits to deposit account 06-1050, referencing attorney-docket number 08935-218001.

Respectfully submitted,

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